LABOUR DEPARTMENT

The 28th June, 1982

No. 9(1)82-6 Lab/6137.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of the Secretary, H.S.E. Board, Chandigarh, (ii) XEN (Operation), H.S.E. Board, Ambala Cantt.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference Nos. 84 of 1979 (322-Fbd of 1981) and 240 of 1979 (331 of 1981-Fbd)

between

SHRI BHAIYA LAL, AND SHRI KUL BHUSHAN LAL, WORKMEN AND THE RESPONDENT MANAGEMENT OF (i) THE SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH, (ii) THE EXECUTIVE ENGINEER (OPERATION) HARYANA STATE ELECTRICITY BOARD, AMBALA CANTT.

Shri Rajeshwar Nath, for the workmen.
Shri S.S. Sarohi, for the respondent management

AWARD

These reference Nos. 84 of 1979 (322 of 1981-Fbd) and 240 of 1979 (331 of 1981-Fbd) have been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—*vide* his order No Amb/9-79/15503, dated 6th April, 1979, and ID/Amb/123-79/58190, dated 27th December, 1979 under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Bhaiya Lal and Shri Kul Bhushan Lal, workmen and the respondent management of (i) The Secretary, Haryana State Electricity Board, Chandigarh, (ii) The Executive Engineer (Operation), Haryana State Electricity Board, Ambala Cantt. The terms of the references were :—

> Whether the termination of services of Shri Bhaiya Lal and Shri Kul Bhushan Lal was justified and in order ? If not, to what relief are they entitled ?

Notices were issued to the parties, after receiving the reference order by the Labour Court, Rohtak. The parties appeared and filed their pleadings The case of the workmen according to demand notice and claim statement is that they were working as instructors with the Industrial Training Institute, Ambala City. They received the orders from the Principal of the Industrial Training Institute to report for duty on 29th March, 1973 in Haryana State Electricity Board, Ambala Cantt in connection with the alternative arrangements with the threat of strike of the staff of Haryana State Electricity Board. The workmen were asked to perform the duty of Line Supdt. They joined the Board in a very difficult and critical juncture when the staff of the Board has gone on strike and worked efficiently with the entire satisfaction of their senior officers. In the meanwhile the Board notified certain vacancies of line Supdt.,—*vide* letter dated 3rd April, 1973 marked as annexure P-2. The order of the Principal for direction to join the duty is annexure P-1. For these vacancies the claimants applied the copies of the application is annexure P-3 with the detailed qualification and experience

On these application the depattment offered the job of Line Supdt in the grade of Rs 200—450. The letter for offering the job is annexure P-4. The letter did not contain any condition for the appointment that the appointment was subject to confirmation by higher authorities or holding any qualification. The Board also offered the service to other persons like the claiments of line Supdt. many of them are still on the roll of the Board as Line Superintendent in the regular pay scale against a permanent existing vacancies. The claimants terminated the right of lien with the Industrial Training Institute, Ambala. Though in the letter of appointment it was written "appointment is temporary but likely to continue" Yet the Secretary of the Board through letter dated 20th August, 1975 conveyed the decision of the Board that the appointments made during the strike containing the abovesaid clause be treated as regular The above said letteris marked as annexure P-5. The claimants has completed the period of probation with good work and conduct. They continued to serve the Board from the date of appointment till the termination dated 17th March, 1976 for three years. The letter of termination is marked as Annexure P-8. The termination has very seriously effected the claimants' future carreer. The claimants have even relinquished their job with the Industrial Training Institute, Ambala and now the claimants have crossed the age for entry into Government service. The termination was illegal because no prescribed procedure of law has been followed while terminating the services. No reason was informed for the termination and no opportunity was provided to the claimants. Even the condition lay down in 25-F of the Industrial Disputes Act, was not fulfilled. In the termination order there is a discrimination as many employee with lesser qualification as compared to the claimants had been allowed to continue in service and are still in the employment of the Board. So the claimants are entitled for the reinstatement with continuity of service and full back wages.

The case of the respondent according to the written statement is that the claimant is bad for non-joinder of the parties. The claimant is barred by the Electricity Supply Act. The claimant is barred by the principles of *res judicata*. The claimants filed a writ petition in the High Court of the State of Punjab and Haryana Writ Petition No. 1582 of 1976 on the same matter. The same was dismissed by the Hon'ble High Court on 10th May, 1976 and this Court has no jurisdiction to try these references. The petitioners are not the workman under the Industrial Disputes Act as their salary is Rs. 500 per month. The claimants were appointed as Line Superintendent purely on temporary basis. The case of these persons were reviewed by the Competent Authority because during the strike period different officers made the appointment orders and the persons who fulfilled the qualifications and other conditions for the post were made regular and those who did not fulfill the educational qualifications for the post of Line Superintendent were terminated. The claimants were never assured that they should leave his lien with their parent department. The claimants were appointed purely on temporary basis likely to continue. The Secretary of the Board issued a circular to review the case of the appointment made during the strike and in view of the decision the case of the work men was also reviewed and it was found that the claimant did not fulfill the qualification for the post. Though the claimants served the department for more than two years but they were not confirned. So the termination was legal and justified. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the reference is bad for non joinder of necessary party ?

(2) Whether the reference is barried by the principles *res judicata* ?

(3) Whether the petition are covered by the definition of the workman within section 2-S of the I.D. Act ?

(4) Whether the workmen were temporary employees and their services could be terminated in a summary way ?

(5) Whether the workmen were not qualified for the posts ? If so, towhat effect ?

(6) As per feference ?

No other issue is pressed or prayed for. Issue No. 1 and 2 be treated as preliminary issue. After recording the evicence on the issue No. 1 and 2, my predecessor decided the issues on 30th November, 1979, in favour of the workman. These cases were sent to this Court,—*vide* order dated 23rd February, 1982. The evidence of both the parties were taken by my predecessor. The decision on issue No. 1 and 2 is as under :—

Issue No. 1 & 2.—This my order will decide issue No. 1 and 2 which were framed by my learned predecssor in the refernce No. ID/Amb/9-79 made by the Hon,ble Governor of Haryana to this Court for adjudication the dispute existing between the workman Shri Bhaiya Lal and the management of Secretary, H.S.E.B., Chandigarh and Xen., H.S.E.B., Ambala Cantt. These issues are as under :—

(1) Whether the reference is bad for non-joinder of necessary party?

(2) Whether the reference is barred by the principles of *res judicata*?

After receiving the abovesaid reference notices were issued to both the parties, the workman filed the claim statement before this Court through his authorised representative and the respondent-management filed their written statement denying the allegations levelled againt them in the claim statement. They also took the preliminary objection that this claim is barred by the principle of *res judicata* because the writ petition No. 1582 of 1976 filed by this workman before the Punjab and Haryana High Court against this management on the same grounds which are mentioned in his claim statement hes already been dismissed on 10th May, 1976. The management also took the plea that necessary parties has not been made the party in this reference. On the pleadings of the parties various issues were framed by my learned predecessor on 29th June, 1979, out of which issue No. 1 and 2 are as written above and these issues were treated as preliminary issues. Both the parties were directed to produce their evidence on these issues only. The workman did not produce any evidence but the management filed Ex. M-1 and M-2, the judgement of the writ petition No. 1582 of 1976 and 1550 of 1976 in their evidence.

Argument was heard on 26th October, 1979, and now I decide these as under. I will take issue No. 2 first and then decide issue No. 1.

Issue No. 2.—The learned representative of the management took the objection that this reference is barred by the principle of *res judicata* because the writ petition No. 1582 of 1976 filed by this workman against this management before the Punjab and Haryana High Court has already been dismissed by the Hon'ble High Court,—*vide* order dated 10th May, 1976. The grounds agitated in the claim statement in the case are the same which were previously agitated in abovesaid petition. He further argued that for this reason this reference is bad and barred by the principle of *res judicata*. Before deciding this issue on facts I would like to write down the law laid down by the Hon'ble Supreme Court in the case the workman of Cochin Port Trust *versus* the Board of Trustees of the Cochin Port Trust and another, 1978 L.I.C., page 1111, that "it is well known that the doctrine of *res judicata* is codified in S. 11 of the Code of Civil Procedure but it is not exhaustive. Section 11 generally comes into play in relation to civil suits. But apart from the codified law the doctrine of *res judicata* for the principle of *res judicata* has been applied since long in various other kinds of proceedings and situations by Court in England, India and other countries. The rule of constructive *res judicata* is engrafted in Explanation IV of S. 11 of the Code of Civil Procedure and in many other situations also principles not only of direct *res judicata* but of constructive *res judicata* are also applied. If by any judgement or order any matter in issue has been directly and explicitly decided the decision operates as *res judicata* and bars the trial of an identical issue in a subsequent proceedings between the same parties. The principle of *res judicata* also comes into play when by the judgement and order a decision of a particular issue is implicit in it, that is it must be deemed to have been necessarily decided by implication then also the principle of *res judicata*

on the issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attach in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and therefore is taken as decided.".

In the instant case no doubt the grounds mentioned in the claim statement were the same in the writ petition before the High Court but there is no question of applying the principle of constructive *res judicata* in this case. What is however to be seen is whether from the order dismissing the writ petition *in limine* it can be inferred that all the matters agitated in the said writ petition were either explicitly or implicitly decided against the management. Indisputably nothing was expressly decided. In that writ petition and shown in Ex M-1 and Ex. M-2 the effect of a non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication, be taken to have decided that it was not a fit case where motion be an issue or writ petition be decided on merits. It may be due to several reasons. But since the order is not speaking order or finds difficult to accept the arguments put forward on behalf of the respondent-management that it must be mean to have necessary decided implicitly all the question in relation to the grounds mentioned in the writ petition. A writ petition is a different proceedings. But the technical rule of *res judicata* although a wholesome rule based upon public policy cannot be stretched too far to bar the trial of identical issue in a separate proceedings merely on uncertain assumption that the issues must have been decided. It is not safe to extend the principles of *res judicata* to such an extent so as to found it on mere guess work. At this stage I would like ot write down the example given by Hon'ble Supreme Court in the case of the workman of Cochin Fort Trust *versus* Board of Trustees (*Supra*) that :–

> "Suppose a writ petition is filed in a High Court for grant of a writ of certiorari to challange some order of decision on serveral grounds. If the writ petition is dismissed after contest by a speaking order obviously it will operate as *res judicata* in any other proceedings, such as of suit Art. 32 or Art. 136 directed from the same order either at the threshold or after contest say only on the ground of laches or the availability of an alternative remedy then another remedy open in law either by way of suit or any other proceedings obviously will not be barred on the principle of *res judicata*. Of course a second writ petition on the same course of action either filed in the same High Court or in another will not be maintainable because the dismissal of one petition will operate as a bar in the entertainment of another writ petition. Similarly even if one writ petition is dismissed *in limine* by non-speaking one wordorder "dismissed", another writ petition would not be maintainable because even the one word order, as we have indicated above must necessarily be taken to have decided impliedly that the case is of not fit one for exercise of the writ jurisdiction of the High Court. Another writ petition from the same order or decision will not lie. But the position is substantially different when a writ petition is dismissed either at the threshold or after contest without expressing any opinion on the merits of the matter, then no merits can be deemed to have been necessarily and impliedly decided and any other remedy of suit or other proceedings will not be barred on the principle of *res judicata*."

Now reading and seeing Ex. M-1 and M-2 there is no doubt the order passed by the Hon'ble Punjab and Haryana High Court in the above said writ petition is not speaking one. Though the grounds in the claim statement as well as in the writ petition are the same. In these circumstances, I hold that this reference is not barred by the principle of *res judicata*. So I decide this issue No. 2 against the management and in favour of the workman.

Issue No. 2.—The respondent management did not press for this issue so I decide this issue against them and in favour of the applicant.

Issue No. 3.—Issue No. 3 is whether the claimants are covered under the definition of workman within section 2(s) of the Industrial Disputes Act. The respondent produced two witnesses on the remaining four issues. Shri Ram Kumar, Head Clerk, Xen, H.S.E.B., Ambala, as MW-1 and Shri A.S. Mehta, Xen, M.M.O. Chandigarh, as MW-2. The witnesses of the respondent did not speak a single words in respect of this issue. They have not touched this issue in the evidence nor evidence is produced before me to prove this issue that the claimants are not covered under section 2(s) of the Industrial Disputes Act. In the absence of any evidence of both the sides, I hold that the claimants are workmen under section 2(s) of the Industrial Disputes Act, because in the written statement they have raised one objection as the claimants were drawing more then Rs. 500 so they are not the workmen. I did not agree with the argument and the pleadings of the respondent in respect of this issue that the person drawing Rs. 500 is not a workman. The Line Superintendent comes under the definition of 2(s) because he works with his own hands at the line and had no supervisory duties as desired by the Act, so the issue is decided against the respondent management and in favour of the workmen.

Issues Nos. 4, 5 and 6.—On these issues the repspondent did not produce any evidence or documents to prove that the wrokman were temporary and their services should be terminated in a summary way. The workmen worked with the board about three years as stated by the workmen in his statement as MW-1 and in his claim statement which was not rebutted by the respondent. The claimants may be temporary but their service cannot be terminated in a summary way as the board has done because they have worked for three years with the board with the entire satisfaction of the superiors. The respondent witness MW-1 Shri A. S. Mehta has stated in his cross examiation that the work and conduct of these workmen were good during their service in the Board. It shows there was no complaint about the work of these claimants and the persons working proper ly cannot be terminated without any reason. The prrson given in the termination letter is that they were not qualified as required by the Board. These workmen were called to help the Board at the time of strike by the staff and they joined the duty in the strike period on the order of Deputy Commissioner of the District to continue the public services to facilitate the service. After that the Board advertise the posts, *vide* Exhibit M- 1and M-2. The applicants submitted their applications in reference to the advertisement,—*vide* Exhibit M-3 stating therein the detail of their qualifications and experience on the application. The claimants were offered the appointment as Line Superintendent,—*vide* Exhibit M-4. The Secretary of the Board issued letter Exhibit M-1 dated the 24th July, 1974 in which it has made clear that the appointment, made during the strike which contains the terms "the appointments is purely temporary but likely to continue" may be treated as regular employees.

The representative of the workmen argued that,—*vide* Exihibit M-5 it is clear that the claimants were appointed as regular employees. He further argued that Executive Engineer Ambala Cantt sent letter Exhibit MW-2/3 for recommending to treat the qualification of the claimants equivalent to the diploma as they are equal to the diploma. The Executive Engineer again wrote a letter to the Chief Engineer dated the 27th January, 1976, which is Exhibit M-8 for recommending these claimants, but even after that their services were terminated on 17th March, 1976 as admitted by the respondent witness MW-2. He further argued that the respondent witness MW-2 has admitted in his cross-examination that on these posts matriculate are still working. In these circumstances the respondent has failed to prove that what qualification they require for these posts. The board should have rejected the applications of the claimants when they applied on the advertisement of the Board. The application contained the detailed qualification of the claimants. If they were not qualified they should not be offered the posts of Line Superintendent for which they were not qualified. When they have offered the posts and they worked on the posts for more than two years, then the termination was not justified under the law. He further argued that the workmen

worked for more than two years and they were not even offered the notice pay or retrenchment compensation as required under section 25-F of the Industrial Disputes Act. The witness of the respondent MW-1 and MW-2 have stated in their cross examination that the claimants were not offered or given the notice pay or retrenchment compensation. The Board should have called the explanation of these workmen to give satifsfactory reply for the qualification and when the Executive Engineer has stated in his statement that still the matriculates Line Superintendents are working. Even these claimants were technical men having more knowledge than the matriculate persons. The claimants were employed as Instructor in the Industrial Training Institute. They were at the need of the Board to run the work at the emergency and they were treated in such a way that no employer can treat their employees. A that time of requirement they were qualified and when they could get more qualified persons they become unqualified for the posts. The Secretary of the Board has clearly written in the letter Exhibit M-5 that the persons employed at the time of strike may be treated as regular.

The claimants were employed in the Government job. They were called from their permanent job and put them on the road without any reason, so they are entitled for the reinstatement with continuity of service. I agree with the arguments put forward by the workmen's representative because the claimants were in the Government employment and they were called at the emergency of the Board, when there was strike. They worked for more than two years with the Board with the entire satisfaction of his superior officers. The Xen has recommended the cases of these workmen to the Chief Engineer for their approval of appointment, shows that the workmen's work and conduct was quite good. When the Board's person admits in the Court that there are matriculates working on these job, then they are more qualified then the matriculate. They should not be terminated in this way. So the termination is not justified and the workmen are entitled for the reinstatement with continuity of service. They are not entitled for the back wages as they were terminated in the year 1976 and the gave the demand notice for this reference in the year 1979 after a lapse of three years. It is a fault of the workmen for not coming in the Court at the proper time, so are not entitled for the back wages.

This be read in answer to these references.

Dated the 8th June, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 1279, dated the 12th January, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad

H. L. GUGNANI,

Commissioner & Secretary to Government, Haryana,
Labour and Employment Department.

5650 CS (II) -Govt. Press, U.T., Chd.